Section Four

This section gives a synopsis of laws and regulations that are applicable to archaeological investigations in Iowa. This section also gives general legal information that is applicable to agencies, groups, archaeologists, or individuals that conduct projects having the possibility to affect cultural resources or human remains in the state of Iowa.
This chapter describes the federal, state, and local laws, regulations, and ordinances that have been enacted to protect cultural resources or human remains. Some of these laws pertain to regulatory archaeology while others may affect privately funded projects. It is important to note in this section that there can be legal consequences when legal aspects pertaining to cultural
resource protection are not followed.

There are various international agreements between countries that have been instituted to protect cultural resources at a global level. Some of these International Conventions and other Instruments are listed below.

Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)
Convention for the Protection of the World Cultural and Natural Heritage (1972)
Unidroit Convention on Stolen or Illegally Exported Cultural Objects (1995).
Convention Concerning the Protection of the World Cultural and Natural Heritage (1972).
European Convention on Offences Relating to Cultural Property (1985)
Convention for the Protection of the Architectural Heritage of Europe (1985)
European Convention for the Protection of the Archaeological Heritage of Europe (Revised)(1992)
Unidroit Convention on Stolen or Illegally Exported Cultural Objects (1995).

Charters adopted by the General Assembly of ICOMOS to protect cultural resources are listed below:

International Charter for the Conservation and Restoration of Monuments and Sites (The Venice Charter) (1964)
Charter of Cultural Tourism (1976)
The Florence Charter (Historic gardens and landscapes) (1982)
Charter on the Conservation of Historic Towns and Urban Areas (The
ICOMOS Charter for the Protection and Management of Archaeological
ICOMOS Charter on the Protection and Management of Underwater Cultural
Heritage (1996)

United States laws pertaining to cultural resources are listed below alphabetically. USC stands for the United States Code.

Abandoned Shipwreck Act of 1987 (PL 100-298; 43 USC 2101-2106)
American Antiquities Act of 1906 (16 USC 431-433)
Amtrak Improvement Act of 1974
Antiquities Act of 1906
Archaeological and Historic Preservation Act of 1974 (16 USC 469-469c)
Archaeological Resources Protection Act of 1979, as amended (16 USC 470aa-mm)
Bald Eagle Protection Act of 1940 (16 USC 668-668d)
Department of Transportation Act of 1976
Disposal of Records (44 USC 3301 et seq.)
Endangered Species Act of 1973, as amended (16 USC 1531-1543)
Federal Property and Administrative Services Act of 1949, as amended (40 USC 483 [b])
Federal Records Act of 1950, as amended (Records Management by Federal Agencies, 44 USC 3101 et seq.)
Freedom of Information Act of 1982 (5 USC 552)
Historic Sites, Buildings, Objects, and Antiquities Act of 1935 (16 USC 461-467)
Internal Revenue Code of 1986 (Qualified Conservation Contributions) (26 USC 170[h])
Internal Revenue Code of 1990 (Rehabilitation Credit) (26 USC 47)
Lacey Act of 1900 (18 USC 43-44)
Marine Mammal Protection Act of 1972 (16 USC 1361-1407)
Migratory Bird Treaty Act of 1918 (16 USC 703-711)
Mining in the National Parks Act of 1976 (Section 9) (16 USC 1908)
Museum Properties Management Act of 1955 (16 USC 18)
National Environmental Policy Act of 1969 (42 USC 4321)
National Historic Preservation Act of 1966, as amended (16 USC 470-470t, 110)
Native American Graves Protection and Repatriation Act of 1990 (25 USC 3001-3013)
Outer Continental Shelf Lands Act (43 USC 1332)
Preservation, Arrangement, Duplication, Exhibition of Records (44 USC 2109)
Privacy Act of 1974 (5 USC 552a)
Public Buildings Cooperative Use Act of 1976 (40 USC 601a)
Reservoir Salvage Act of 1960, as amended (16 USC 469-469c)
Theft of Government Property (18 USC 641)

United States regulations pertaining to cultural resources are listed below alphabetically. CFR stands for the United States Code of Federal Regulations.

Certifications Pursuant to the Tax Reform Act of 1976 (36 CFR 67.2)
Curation of Federally-Owned and Administered Archaeological Collections (36 CFR 79)
Disposition of Federal Records (36 CFR 1228)
Federal Property Management Regulations (41 CFR 101)
Federal Records; General (36 CFR 1220)
Freedom of Information Act Regulations (36 CFR 810)
Historic Preservation Requirements of the Urban Development Action Grant Program (36 CFR 801)
National Historic Landmarks Program (36 CFR 65)
National Register of Historic Places (36 CFR 60) and Determinations of Eligibility for Inclusion in the National Register (36 CFR 63)
Native American Graves Protection and Repatriation Act: Final Rule (43 CFR 10)
Preservation of American Antiquities (43 CFR 3)
Procedures for State, Tribal, and Local Government Historic Preservation Programs (36 CFR 61)
Procedures for Implementation of the National Environmental Policy Act (36 CFR 805)
Protection of Archaeological Resources (43 CFR 7)
Protection of Historic and Cultural Properties (36 CFR Part 800)
Research Specimens (36 CFR 2.5)

One United States convention pertaining to cultural resources is listed below. A convention is an official agreement between governments that specifies regulations of certain matters for all parties involved.


Section 4: Background Information
United States executive orders pertaining to cultural resources are listed below. An executive order is a rule or order issued by the president of the United States.

Executive Order No. 11593 Protection and Enhancement of the Cultural Environment (1971)
Executive Order No. 13007 Indian Sacred Sites (1996)

**National Historic Preservation Act and Section 106**

The National Historic Preservation Act (NHPA) of 1966, as amended, created a national program aimed at preserving significant historic places associated with a broad range of American history from its earliest record to the present. The NHPA establishes a working partnership among government agencies and individuals to identify significant properties, determine their significance, and preserve those properties considered worthy of protection. The NHPA gives much of the responsibility for implementing the program to States, Indian Tribes, and local governments. Most archaeology conducted in the state of Iowa is carried out pursuant to Section 106 (regulatory archaeology) of this act.

Section 106 mandates that federal agencies take into account their “undertakings” or effects of their actions on properties listed on or eligible for listing on the National Register of Historic Places. The federal agency has legal responsibility to determine if an undertaking exists, defining the undertaking’s Area of potential effects, and what the effects are on historic properties. Regulations specify that the Area of potential effects must include areas directly or indirectly impacted by the action. The federal agency also has the responsibility to determine the consulting parties to contact for the undertaking, consult with them as appropriate, and to review existing information pertinent to the undertaking.

Any individual or entity can challenge a federal agency's definition of an undertaking or its area of effect. All federal agencies are legally responsible for ensuring compliance with Section 106. A federal agency might authorize its applicants to consult with the SHPO/THPO, or to undertake identification and evaluation efforts, and may require that the applicant pay any costs associated with this work. The federal agency, however, remains the responsible party for ensuring compliance.

An undertaking is defined as "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license, or approval; and those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency (36 CFR Part 800)” that can result in changes in the character or use of historic properties, if any such properties are
located in the Area of potential effects. Undertakings may include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.

Such undertakings can occur on land owned by any entity -- a federal or state agency, a local government, or a private individual. All are subject to Section 106 because undertakings include not only federal actions on its own lands, but also federally funded actions that may include licensing and permitting actions. For example, a local economic development activity that includes a Small Business Administration loan guarantee as part of the financing package is subject to Section 106.

Once a federal agency has identified that it has an undertaking, the agency must define the undertaking's area of potential effects. The Area of potential effects must include "geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36 CFR Part 800)." For example, the Area of potential effects for a natural gas pipeline would include the actual pipeline trench and also the construction right-of-way, compressor stations, meter stations, staging areas, storage yards, access roads, and other ancillary facilities.

The agency needs to consider the full range of effects that might occur. For example, a construction project might cause vibration impacts to historical archaeological sites that contain structural remains. Note, too, that the Area of potential effects might be different for aboveground resources subject to visual or audible effects. For example, Effigy Mounds National Monument, with its setting high atop the bluffs, provides a spectacular view into the Mississippi River valley. Although Effigy Mounds is considered significant for many reasons other than its view, undertakings along the river have the potential to impact the view from Effigy Mounds and thus have the potential to have an indirect effect on a significant resource. Because of the potential for indirect effects to Effigy Mounds, agencies planning undertakings in the valley might need to include this property in the Area of potential effects.

As part of compliance with Section 106 of the NHPA, the federal agency shall involve the following consulting parties; the Advisory Council on Historic Preservation, the SHPO, the THPO, Indian Tribes and Native Hawaiian Organizations, representatives of local governments, applicants for federal assistance, permits, licenses, and other approvals, and additional consulting parties. The consulting and review procedures are often referred to as the "Section 106 process," and are set forth in the regulations issued by the Council (36 CFR Part 800). Section 106 is intended to identify historic properties that may be affected by a federal undertaking, and to devise ways to avoid, minimize, or mitigate any adverse effects of the project on the historic properties.
Before describing the Section 106 process, it should be noted that there are some alternative procedures. With the approval of the Advisory Council on Historic Preservation, agencies can operate under counterpart regulations. Some agencies have negotiated Programmatic Agreements with the Advisory Council and the SHPO/THPO. These Programmatic Agreements allow an agency to implement an alternate procedure for complying with Section 106 for specific agency programs. There is an ever-changing list of Programmatic Agreements. Most Programmatic Agreements are negotiated on a state or regional basis. Some Programmatic Agreements are negotiated on a national level. In these instances, the National Conference of State Historic Preservation Officers (NCSHPO) negotiates and signs the Programmatic Agreement on behalf of SHPO’s/THPO’s.

To date, the Department of Housing and Urban Development (HUD) is the only agency which has Council-approved counterpart regulations. At the current time, the Department of the Army is also in the process of finalizing counterpart regulations to 36 CFR Part 800 in consultation with the Advisory Council. HUD's regulations are found at 24 CFR Part 58. Among federal agencies at the current time, HUD's position is unique in that HUD can pass on to grant recipients not only the authority to negotiate with the SHPO, but also the legal responsibility for complying with the law.

Agencies who follow their own counterpart regulations have specific procedures outlined in their counterpart regulations on how they will meet the requirements of Section 106. Section 110 (a)(2)(E) of the National Historic Preservation Act directs federal agencies to develop procedures for implementing Section 106 and 36 CFR Part 800 encourages federal agencies, in consultation with the Advisory Council, to develop counterpart regulations. These counterpart regulations carry out the Section 106 process, that, after Advisory Council concurrence, stand in place of the procedures set forth in 36 CFR Part 800.

Other agencies who do not have their own counterpart regulations and who follow 36 CFR Part 800 must allow the Advisory Council on Historic Preservation a reasonable opportunity to comment before proceeding with the project. The federal agencies are required to do this work before the expenditure of federal funds or the issuance of any licenses or permits.

**Steps in the Section 106 Process**

Once the agency has defined the undertaking, determined the Area of potential effects, and initiated consultation, the agency is ready to begin Section 106 compliance. The regulations outline a five-step process:

- Identify and evaluate historic properties
- Assess effects
Enter into consultation
Allow the SHPO/THPO or the Advisory Council to comment
Proceed

Step 1

In Step 1, the regulations require that the federal agency "make a reasonable and good faith effort to carry out appropriate identification efforts… (36 CFR Part 800)” for historic properties that may be affected by the undertaking. The regulations also specify that the efforts “may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects.” Particularly, the identification efforts should be consistent with the Secretary of the Interior’s Standards and Guidelines for Identification. The regulations also state, “The agency official should also consider other applicable professional, state, tribal and local laws, standards and guidelines (36 CFR Part 800).” In accordance with 36 CFR Part 800, the agency official shall consult with the SHPO/THPO to:

- Determine and document the area of potential effects;
- Review existing information on historic properties within the area of potential effects, including any data concerning historic properties not yet identified;
- Seek information as appropriate from consulting parties;
- Gather information from any Indian Tribe or Native Hawaiian organization identified;
- Identify historic properties;
- Evaluate historic significance;
- Determine whether a property is eligible;
- Results of identification and evaluation; and
- Determination of historic properties affected

The Federal agency has ultimate authority in making determinations on proposed undertakings under the National Historic Preservation Act; SHPO/THPO acts as a consulting party within the process and has no regulatory authority.
As part of the identification and evaluation process, an agency may use a phased process to conduct identification and evaluation efforts. For example, an agency may choose to conduct an identification survey such as an archaeological Phase IA Reconnaissance survey or Phase I Intensive survey in the area of potential effects particularly if no information on historic properties is available for the area of potential effects and there appears to be a potential for historic properties to be located within the area of potential effects. This survey is
conducted to identify cultural resources that exist within the proposed project area.

The majority of cultural resources found are often determined to not be significant, and thus, no further investigations may be recommended for them. However, Phase I surveys sometimes identify sites that are potentially eligible for listing on the National Register. Such a finding would necessitate additional archaeological investigations in the form of Phase II testing, which involves detailed research to determine the significance and integrity of the sites. If the Phase II testing results in finding National Register-eligible properties, then the project moves to Step 2 in the Section 106 process.

**Step 2**

Step 2 involves carefully examining the project to determine whether it will have an adverse effect on the identified eligible or potentially eligible historic properties. An effect occurs when the undertaking may alter “the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.” An undertaking is considered to have an adverse effect when the “undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.” If an adverse effect is found, then the federal “Agency Official shall consult further to resolve the adverse effect (36 CFR Part 800).”

**Step 3**

If there is an adverse effect, then the agency and the SHPO/THPO consider ways to minimize the impact of the project on the resource. This is Step 3. A decision should be made about what to do with the historic property. There are various ways to minimize the impact to the identified historic property that are discussed in Section 3, Chapter 4. Re-designing the project to avoid the historic property may appear as one way of minimizing the impact but may actually delay the decision about what to do with the historic property.

**Step 4 and Step 5**

Once the federal agency and the SHPO/THPO have consulted to resolve adverse effects, the project moves to Step 4. At this step, the agency must notify the Advisory Council and determine Council participation. Once the Council's comments have been taken into account, the project moves to Step 5 and proceeds. The federal agency is legally required to see that the Section 106 process is completed “prior to the approval of the expenditure of any federal funds on the undertaking or prior to the issuance of any license (36 CFR Part 800).” If the agency does not fulfill its responsibilities, then any citizen or organization can pursue legal action to make the agency fulfill the requirements.
In addition to Section 106, federal agencies have other legal responsibilities toward historic properties. Section 110 of the National Historic Preservation Act sets forth proactive measures which federal agencies must implement on lands that they own or in their programs and for National Historic Landmarks that may be affected by a federal undertaking. Likewise, some sections of the Native American Graves Protection and Repatriation Act (NAGPRA) apply to lands owned by federal agencies. Depending on the type and scope of the federal undertaking, provisions of the National Environmental Policy Act (NEPA) also may require consideration of historic properties in the Environmental Impact Statement process.

Because federal agencies can pass the authority for complying with Section 106 on to state agencies that administer certain federal programs, those state agencies often consult with the SHPO/THPO under the auspices of Section 106. For example, the Iowa Department of Natural Resource's WasteWater Management Bureau administers the federal Environmental Protection Agency's "State Revolving Loan Fund" program to assist communities in financing the construction of waste treatment facilities. As part of its administrative oversight of the program, the Department of Natural Resources must ensure that each facility construction project has been reviewed by the SHPO, and that the applicant has addressed the SHPO's concerns.

There are several areas authorized and defined in Iowa State law, the Iowa Code, that specifically refer to historic preservation and archaeological resources. Archaeologists, agencies, contractors, and landowners should be aware of these state laws and regulations when conducting projects that may affect cultural resources or human remains in the state of Iowa. When undertaking a project, it is the responsibility of each agency sponsor, cultural resource manager, and Principal Investigator to carefully consider which of these laws and regulations apply to the specific project.

When federal agencies are not involved in a project, state agencies may have a responsibility to consult with the SHPO/THPO regarding a project's effect on historic properties according to the state Code of Iowa. The Code of Iowa includes several sections designed to protect cultural resources. The Iowa Code authorizes and defines the consideration of cultural resources by state agencies in the 28E Agreement, the Office of the State Archaeologist, the consideration of cultural resources by cities, counties, land use districts, the Department of Transportation, and the Creation of Historic Preservation Districts. Specific sections of the Iowa Code that pertain to archaeological historic properties are listed below:

- Section §303.2(2) (a) 28E of the Iowa code
- Chapter 314.24 – General Administration for Highways; Natural and Historic Preservation
- Chapter 67(107,111)(4) – Development and Management of Recreational Trails on State Lands; Guidelines for Trail Location
- Chapter 263 – Office of the State Archaeologist
Chapter 263B and 716.5 – Protection of Ancient Human Remains
Administrative Code Chapter 685 – Protection of Ancient Human Remains
Iowa code (144.34) – Permits for Disinterment of Human Remains
Section 358A – Counties and the Protection of Historic Properties
Sections 303.20-303.34 – Creation of Historic Preservation Districts
Sections 414.1-414.2 – Cities and Protection of Historic Properties
Sections 303.41-303.68 – Land Use Districts
County Ordinances Protecting Cultural Resources and Human Remains

Iowa Code Chapter 303.2(2)(a) requires that a state agency that owns, manages, or administers a historic property must enter into an agreement with the Department of Cultural Affairs (the Department within which the State Historical Society is located). This agreement is called a “28E Agreement.” The purpose of the agreement is to specify a process for ensuring that protection of historic properties is considered during agency planning activities. Boards of Regents institutions are the only state agency exempt from this requirement. To date, only the Department of Natural Resources has entered into a 28E Agreement with the State Historical Society, Department of Cultural Affairs.

Chapter 28E of the Iowa Code section §303.2(2) (a) states, “A state agency which owns, manages, or administers a historical site must enter into an agreement with the Department of Cultural Affairs under Chapter 28E to ensure the proper management, maintenance, and development of the site. For the purposes of this section, ‘historical site’ is defined as any district, site, building, or structure listed on the National Register of Historic Sites or identified as eligible for such status by the state Historic Preservation Officer or that site is identified according to established criteria by the State Historic Preservation Officer as significant in national, state, and local history, architecture, engineering, archaeology, or culture.”

An agency may choose to formalize their 28E responsibilities through a 28E Agreement document with the State Historic Preservation Office. The purpose of the 28E Agreement is to facilitate cooperation with the SHPO in insuring the appropriate levels of preservation, management, maintenance, and development of certain historic sites under the jurisdiction of the state agency. The 28E Agreement entails consultations with the State Historic Preservation Office resulting in a written document that specifies procedural arrangements between the state agency and the SHPO. The 28E Agreement may also specify various projects or undertakings that may be excluded from further review.

The 28E Agreement document must be filed with the County Clerk in the county of which the document will be entered. The 28E Agreement may be reviewed as needed and revised by filing the revised document with the county clerk or by amending the document with a signed letter of agreement (LOA) by the director of the state agency and the administrator of the SHSI.

Another chapter of the Iowa Code that makes provisions for considering
cultural resources is Chapter 314.24, which pertains to highway funding. Chapter 314.24, General Administration for Highways, states, “Cities, counties, and the department shall to the extent practicable preserve and protect the natural and historic heritage of the state in the design, construction, reconstruction, relocation, repair, or maintenance of roads, streets, or highways. Destruction or damage to natural areas, including but not limited to prime agricultural land, parks, preserves, woodlands, wetlands, recreation areas, greenbelts, historical sites, or archaeological sites shall be avoided, if reasonable alternatives are available for the location of roads, streets, or highways at no significantly greater cost. In implementing this section, cities, counties, and the department shall make diligent effort to identify and examine the comparative cost of utilizing alternative locations for roads, streets, or highways.”

Chapter 67(107,111) of the Iowa Code states, “Guidelines for trail location. Trails constructed and designated on any area shall be subject to the following guidelines and no trail shall be constructed: …(4) To pass over archaeological sites, upon or within 50 feet of known archaeological sites eligible for the National Register of Historic Places or known sites not yet evaluated, except for trails intended to lead to a site for interpretive purposes…”

Chapter 263B of the Iowa Code is another portion of the Code pertaining to cultural resources. This section defines the responsibilities of the Office of the State Archaeologist. The OSA has specific statutory authority and responsibility regarding ancient human remains. Iowa Administrative Code Section 685 specifies procedures for carrying out each of the OSA's responsibilities.

Iowa statutes or state laws pertaining to ancient human remains are listed below numerically. Intentional disturbance of human remains and burials violates state law and may lead to prosecution as an aggravated misdemeanor.

263B.7 Ancient Remains:

The state archaeologist has the primary responsibility for investigating, preserving, and reinterring discoveries of ancient human remains. For the purposes of this section, ancient human remains shall be those remains found within the state which are more than 150 years old. The state archaeologist shall make arrangements for the services of a forensic osteologist in studying and interpreting ancient burials and may designate other qualified archaeologists to assist the state archaeologist in recovering physical and cultural information about the ancient burials. The state archaeologist shall file with the Iowa department of public health a written report containing both physical and cultural information regarding the remains at the conclusion of each investigation.

263B.8 Cemetery for Ancient Remains:

The state archaeologist shall establish, with the approval of the executive council [Governor, Secretary of State, State Auditor, State Treasurer, Secretary of Agriculture], a cemetery on existing state lands for the reburial of ancient human remains found in the state. The cemetery shall not be open to the public. The state archaeologist in cooperation with the department of
natural resources shall be responsible for coordinating internment in the cemetery.

263B.9 Authority to Deny Permission to Disinter Human Remains:

The state archaeologist shall have the authority to deny permission to disinter human remains that the state archaeologist determines have state and national significance from a historical or scientific standpoint for the inspiration and benefit of the people of the United States.

716.5 Criminal Mischief in the Third Degree:

A person commits criminal mischief in the third degree [aggravated misdemeanor] who does either of the following:

1. Intentionally disinters human remains from a burial site without lawful authority.
2. Intentionally disinters human remains that have state and national significance from a historical or scientific standpoint for the inspiration and benefit of the people of the United States without the permission of the state archaeologist.

Iowa administrative code sections pertaining to ancient human remains are listed below numerically.

685 Ancient Human Skeletal remains
685-11.1 Procedures

OSA is the appropriate agency to contact regarding the discovery of human physical remains or suspected human physical remains believed to be over 150 years old. The OSA should be notified of the location of areas believed to represent ancient burial grounds. The director has the authority to deny permission to disinter human physical remains from aboriginal ossuaries, grave sites, cemeteries or any other archaeological deposit that are determined to have state and national significance from the standpoint of history or science.

685-11.1(4) Authority for the OSA for Ancient Burials

The OSA shall maintain records of all known or suspected ancient burial sites in the state. The OSA has the authority to coordinate activities pertaining to ancient burial grounds in order to foster their protection and preservation.

Currently the state of Iowa requires a permit for the disinterment of human remains less than 150 years old. The Iowa Department of Health should be contacted for the permit procedures necessary for such an action as defined in the Iowa Code. This permit may be necessary as a result of a project and was previously discussed in Section 3, Chapter 7. This portion of the Iowa Code (144.34) states;
“Disinterment of a dead body or fetus shall be allowed for the purpose of autopsy or reburial only, and then only if accomplished by a funeral director. A permit for such disinterment and, thereafter, reinterment shall be issued by the state registrar according to rules adopted pursuant to chapter 17A or when ordered by the district court of the county in which such body is buried. The state registrar, without a court order, shall not issue a permit without the consent of the surviving spouse or in case of such spouse's absence, death, or incapacity, the next of kin. Disinterment for the purpose of reburial may be allowed by court order only upon a showing of substantial benefit to the public. Disinterment for the purpose of autopsy or reburial by court order shall be allowed only when reasonable cause is shown that someone is criminally or civilly responsible for such death, after hearing, upon reasonable notice prescribed by the court to the surviving spouse or in the spouse's absence, death, or incapacity, the next of kin. Due consideration shall be given to the public health, the dead, and the feelings of relatives.”

In 1976, the Governor of Iowa established the OSA Indian Advisory Committee shortly after passage of the 1976 ancient burial protection legislation as one of the provisions of that code change. The membership of the informal committee has varied through the years, but two of the original members still serve in their advisory capacity—Maria Pearson and Don Wanatee. New members are added at the recommendation of the Indian community. The current OSA Indian Advisory Committee (OSA IAC) consists of five American Indians who live in Iowa.

The State Archaeologist and OSA Burials Program staff holds regularly scheduled quarterly meetings with the OSA IAC, and informal consultation with committee members is conducted frequently. The committee is kept informed of new and ongoing cases by memos and by telephone, and when needed, through site visits. Committee members are consulted on a range of subjects such as appropriate treatment for particular sites and appropriate reburial ceremonies. All OSA IAC correspondence and requests for input are also sent to the NAGPRA coordinators for the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, the Otoe-Missouria Tribe of Oklahoma, the Sac and Fox Tribe of the Mississippi in Iowa and other potentially interested tribes.

Iowa Code sections 303.20-303.34 authorize the creation of historic preservation districts by referendum. Under this section of the Code, some local governments (counties, cities, and land use districts) have made provisions through zoning procedures for the consideration and protection of historic properties. Case law in Iowa sets a precedent for using zoning or historic designation for establishing Historic Landmarks and Historic Districts. The situation in Iowa is complex because all three types of local government
(Counties, Cities, and Land Use Districts) under home rule can design their own local laws for establishing historic landmarks/single properties. It is especially important to note however, that statutory protection of historic properties in Iowa is not equitable.

First, in comparison between counties, cities, and land use districts, counties are restricted in the local authority that they can exercise. Second, the Code of Iowa covers historic preservation districts containing several historic properties, but does not cover individual historic properties. Thus, because Iowa is a home rule state, local governments can set up their own procedures for recognizing significant individual historic properties. To date, counties in regard to designating individual historic properties have not tested this specific protocol.

Although all local governments must comply with State Code provisions when designating historic districts, three different approaches are mandated in the Iowa Code for counties, cities, and land use districts to protect historic properties within their jurisdictions and to designate a historic district.

Concerning the Iowa Code and Counties, Iowa Code, section 358A pertains to counties. Also, Iowa Code, sections 303.20-303.33 authorizes the creation of historic preservation districts in counties by referendum. The creation of zoning overlay districts containing areas with known historic properties or a potential for containing historic properties can protect historic properties. Currently one county (Dallas County) and one city (Iowa City) use a special zoning district designation to afford some protection for archaeological sites. Two other counties, Jackson and Johnson Counties, are in the process of developing zoning ordinance revisions that would protect archaeological sites. Persons responsible for project activities should check with the local planning department, building official, or historic preservation commission to determine proper procedures with regard to this type of local zoning.

Concerning the Iowa Code and Cities, Iowa Code, section 414 pertains to cities. Iowa cities are authorized to use either historic district designation (Iowa Code Section 303.34) or create historical zoning districts (Iowa Code, section 414.1-414.2) to protect historic properties. This process is regulated by local ordinance and can be initiated by petition, citizen request, or request by the local historic preservation commission. City council approval is required for this process. If project plans will involve a locally designated historic property, landmark, or district, then the developer, agency, or party who is proposing the project must obtain a Certificate of Appropriateness (COA) before local permits will be issued for the work. This means that the property owner needs to submit the project plans to the historic preservation commission for review, approval, and issuance of the COA.

The following Iowa cities have established local historic designation systems: Ames, Bloomfield, Bonaparte, Burlington, Council Bluffs, Davenport, Des Moines, Dubuque, Iowa City, Sioux City, and Waterloo. In addition, Iowa
City has passed a Sensitive Areas Ordinance that affords indirect protection to archaeological sites. For a complete list of local governments with this type of legislation, contact the Local Governments Coordinator, at the State Historical Society. Kerry McGrath is currently the SHSI Local Governments Coordinator at (515) 281-6826 or kmcgrat@max.state.ia.us.

There is only one Land Use District currently in Iowa, the Amana Colonies. This land use district employs a historic designation system like that used by cities (Iowa Code subchapter IV, section 303.41-303.68). These sections of the Iowa Code describe how a Land Use District can designate a historic district.

Counties also have the capability to enact local ordinances to protect historic properties. For example, Dallas County, Iowa, enacted an ordinance that allows the County Conservation Board to assess potential impacts to natural, historical, and cultural resources within potentially sensitive areas of the county prior to zoning board decisions on zoning change requests. Iowa City, Johnson County, Iowa, has also enacted a Sensitive Areas Ordinance identifying archaeological sites and burial sites as resources to consider during development planning.

This chapter describes the National Register of Historic Places and the National Register Nomination process.

Historic properties may be listed on the National Register of Historic Places or designated as National Historic landmarks. The National Register of Historic Places is the official list of the Nation’s cultural resources worthy of preservation. The NHPA authorized the National Register as part of a national
program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archaeological resources. The National Park Service administers the National Register.

Properties eligible for the National Register of Historic Places must have integrity and significance. They include districts, sites, buildings, structures, and objects that are significant in American History, architecture, archaeology, engineering, and culture. The National Register criteria state:

“The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and;”

Criteria A: that are associated with events that have made a significant contribution to the broad patterns of our history; or
Criteria B: that are associated with the lives of persons significant in our past; or
Criteria C: that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
Criteria D: that has yielded or may be likely to yield information important in prehistory or history (36 CFR Part 60.4).

The National Register includes seven "Criteria Considerations," which provide further guidance on the eligibility of certain types of properties. A discussion of these exceptions is beyond the scope of this document, but cultural resource managers making National Register recommendations should become familiar with these exceptions (National Park Service National Register Bulletin #12, 1997).

Note that historic properties include not only archaeological sites, but also aboveground resources such as standing structures and buildings. Federal and state laws pertaining to historic properties include the full range of such resources. Oftentimes, this means that an agency should utilize a team of consultants in order to consider all types of historic properties. The SHPO maintains records pertaining to standing structures, and has developed procedures for recording various kinds of aboveground properties. These procedures are not included in this booklet. For information about standing structure requirements, the reader should consult with the SHPO staff historian or architectural historian, at the following address:

Staff Historian or Staff Architectural Historian
Historic Preservation Program
Community Programs Bureau
An up-to-date list of all properties listed on the NRHP can be obtained directly from the National Park Service via the NPS World Wide Web site or from the SHPO. Also, there are a number of National Register Bulletins that directly relate to identifying, defining, and evaluating archaeological sites for NRHP eligibility. Provided below is a list of the available National Register Bulletins that address archaeological sites.

#12 Definition of National Register Boundaries for Archaeological Properties
#15 How to Apply the National Register Criteria for Evaluation
#16A How to Complete National Register Registration Forms
#16B How to Complete National Register Multiple Property Documentation Form
#21 Defining Boundaries for National Register Properties
#28 Using the UTM Grid System to Record Historic Sites
#29 Guidelines for Restricting Information About Historic and Prehistoric Resources
#30 Guidelines for Evaluating and Documenting Rural Historic Landscapes
#36 Evaluating Historical Archaeology Sites and Districts
#38 Guidelines for Evaluating and Documenting Traditional Cultural Properties
#40 Guidelines for Identifying, Evaluating, and Registering America's Historic Battlefields
#41 Guidelines for Evaluating and Registering Cemeteries and Burial Places
#42 Guidelines for Identifying, Evaluating, and Registering Historic Mining Properties
No # Documenting Historic Aviation Properties

The National Register of Historic Places includes National Historic Landmarks that have been designated by the Secretary of the Interior for their significance to all Americans. National Historic Landmarks (NHLs) are objects, structures, buildings, sites, districts, structures, and objects that have been determined by the Secretary of the Interior to be nationally significant in American history and culture.

Potential Landmarks are identified primarily through theme studies and their historic importance evaluated by the National Park Service. Other Federal agencies, State Historic Preservation Officers, and individuals may prepare nominations. The National Park System Advisory Board, which includes citizens who are national and community leaders in the conservation of natural, historic, and cultural areas, meets twice yearly to review nominations for NHL properties. Recommendations by the Advisory Board are made to the Secretary
of the Interior on potential National Historic Landmarks. Final decisions regarding National Historic Landmark designation are made by the Secretary of the Interior. In most cases, designation by the Secretary occurs six to eight weeks following the Advisory Board's recommendation. Designation may be delayed if the Advisory Board or the Secretary of the Interior raises questions regarding the significance, physical condition, or boundaries of a potential Landmark.

NHLs are authorized and monitored by federal regulation 36 CFR 65. This federal regulation discusses the purpose and authority for NHL designation and the effects of designation. It defines the specific criteria, process of designation, recognition, appeal process, and monitoring for NHL properties. This regulation further clarifies alteration of NHL properties and withdrawal of NHL properties with regard to their NHL status.

Section 110 of the National Historic Preservations Act also addresses NHLs and requires federal agencies, to the maximum extent possible, to undertake such planning and actions as may be necessary to minimize harm to any NHL that may be directly and adversely affected by an undertaking. Council regulations 36 CFR Part 800 discuss how federal agencies shall give special consideration to protecting NHLs in the Section 106 process when a federal undertaking may affect a NHL. Under the revised regulations (1999) an agency must invite the Advisory Council and the Secretary of the Interior to consult when there will be adverse effects to a National Historic Landmark.

Some benefits to having a property listed as a NHL are the availability of limited federal funds through the Historic Preservation Fund available for preserving or protecting National Historic Landmarks. NHL property owners should check with their State Historic Preservation Officer to find out about the availability of federal and state funds. Often, state and local governments have grant and loan programs available for historic preservation. National Register listing is a condition for receiving grants and loans from many state and local governments as well as private sources. Some funding sources give National Historic Landmarks higher priority for funding than other National Register properties. There are also Federal income tax incentives available for donating easements and for rehabilitating income-generating historic buildings. Other benefits to having a property listed as a NHL are a bronze plaque to display at the Landmark available at no cost to the owner. The National Park Service also provides technical preservation advice and other forms of assistance to owners of National Historic Landmarks.

Listing of private property as a National Historic Landmark or on the National Register does not prohibit under Federal law or regulations any actions that may otherwise be taken by the property owner with respect to the property. The National Park Service may recommend to owners various preservation actions, but owners are not obligated to carry out these recommendations. They are free to make whatever changes they wish if federal funding, licensing or permits are not involved. Owners should keep in mind that state laws or local

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Section 4: Background Information

Laws that Specifically Pertain to National Historic Landmarks

Benefits of National Historic Landmark Status

Misconceptions About National Register or National Historic Landmark Listed Sites

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ordinances might affect National Historic Landmarks if these legal mechanisms recognize and protect Landmarks, independent of federal law.

The criteria used to select National Historic Landmarks include:

A quality of national significance that is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archaeology, technology and culture; and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association, and:

Association with events that have made a significant contribution to, and are identified with, or that outstandingly represents, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or

Association importantly with the lives of persons nationally significant in the history of the United States; or

Representative of some great idea or ideal of the American people; or

Embodying the distinguishing characteristics of an architectural type specimen exceptionally valuable for the study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

Composition of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

Having yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past 50 years are not eligible for designation. Such properties, however, will qualify if they fall within the following categories:

A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or

A building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the Nation's history and the consequential association; or

A site of a building or structure no longer standing but the person or event
associated with it is of transcendent importance in the Nation's history and
the consequential association; or
A birthplace, grave, or burial if it is of a historical figure of transcendent
national significance and no other appropriate site, building or structure
directly associated with the productive life of that person exists; or
A cemetery that derives its primary national significance from graves of
persons of transcendent importance, or from an exceptionally distinctive
design or from an exceptionally significant event; or
A reconstructed building or ensemble of buildings of extraordinary national
significance when accurately executed in a suitable environment and
presented in a dignified manner as part of a restoration master plan, and
when no other buildings or structures with the same association have
survived; or
A property primarily commemorative in intent if design, age, tradition, or
symbolic value has invested it with its own national historical significance;
or
A property achieving national significance within the past 50 years if it is of
extraordinary national importance.

If a private owner, or the majority of private owners of a potential
Landmark with multiple owners, object to Landmark designation, the Secretary
cannot designate the property. Owners, highest local elected officials, State
Historic Preservation Officers, and members of Congress representing the area
where the potential Landmark is located are notified by the National Park
Service and have the opportunity to comment in writing to the National Park
Service on the potential designation. These parties are provided 60 days to
comment before the meeting of the Advisory Board's National Landmarks
Committee. Interested parties may also attend the National Landmarks
Committee and Advisory Board meetings, and upon request may be given an
opportunity to address the Committee and Board concerning a property's
significance, integrity, and proposed boundaries. For more information on
National Historic Landmarks and the designation of NHLs refer to federal
regulations 36 CFR 65.

Twenty-three National Historic Landmarks (NHLs) have been designated
in Iowa (see list below). Several NHLs are districts comprised of many historic
properties. Consultation with the National Park Service Historic Landmarks
Coordinators, the Advisory Council on Historic Preservation, and the
SHPO/THPO should occur early in the planning stages for proposed projects that
may affect NHL's. An up-to-date list of all NHLs can be obtained directly from
the National Park Service via the NPS World Wide Web site or from the SHPO.
The properties in Iowa listed as National Historic Landmarks are:
Amana Colonies in Middle Amana, Iowa County
Blood Run Site, Lyon County Iowa and Lincoln County, South Dakota
Dodge (Grenville M.) House, Council Bluffs, Pottawattamie County
This chapter describes the participants and some special considerations to account for when considering consulting with the Iowa State Historic Preservation Office.

Participants in the consultation process may include representatives from federal or state agencies, local communities, historic preservation commissions, Native American tribes, Native Hawaiian organizations, or any other interested
party who is undertaking cultural resource investigations in Iowa. Any party interested in consultation with the SHPO is invited to participate.

Federal agencies may enter into consultation with the SHPO/THPO as a result of compliance issues related to Section 106 or for technical assistance. Under regulatory archaeology projects, the SHPO/THPO has 30 calendar days from receipt of an adequately documented finding to respond. If the SHPO does not object or respond within the allotted time, the agency official’s responsibilities under Section 106 are fulfilled (36 CFR Part 800). A lack of response from the SHPO to any federal agency correspondence, other than an adequately documented finding, does not mean the federal agency has completed its obligations under section 106 and that the project may proceed.

State agencies may enter into consultation with the SHPO as a result of compliance issues related to the 28E Agreement or for technical assistance. State agencies may also enter into consultation with the SHPO as a result of compliance issues related to regulatory archaeology and Section 106 that they are complying with on behalf of a federal agency.

Local communities and historic preservation commissions may enter into consultation with the SHPO as a result of compliance issues related to grant funding from a federal or state source or for technical assistance.

Native American tribes may enter into consultation with the SHPO as a result of federal or state compliance issues or for technical assistance. Native American tribes may enter into consultation with a Tribal Historic Preservation Officer (THPO) if one exists. Currently Iowa has no federally recognized THPO’s. Native American tribes may also enter into consultation with federal agencies that sponsor undertakings under the auspices of 36 CFR Part 800 to advise the agency of their concerns with regard to a federal undertaking.

With regard to regulatory archaeology, the Advisory Council regulations 36 CFR Part 800 state that, “It is the responsibility of the Agency Official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process.” And “When Indian tribes and native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101 (d) (6) (B) of the Act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the Section 106 process.” The 36 CFR Part 800 regulations further define the role of the Tribal Historic Preservation Officer (THPO). A federally recognized THPO replaces the SHPO in the Section 106 process. However, if there is no federally recognized THPO and “If an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101 (d) (2) of the Act, the Agency Official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands (36 CFR Part 800).”
36 CFR Part 800 regulations also state that a federal agency should, “Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to § 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The Agency Official should address concerns raised about confidentiality pursuant to § 800.11(c).”

Other interested parties that wish to participate in consultation with the SHPO/THPO may do so as a result of various concerns or involvement in a federally sponsored project in some manner. Other interested parties may include representatives of local governments, applicants for federal assistance, permits, licenses and other approvals, the public, or other interested persons. All of these groups may be considered consulting parties and are welcome to participate in consultation with the SHPO.

Some agencies have specific procedures for consultation with the SHPO. An individual should consult with the agency sponsoring their project, if an agency is involved with the project, concerning the agency’s procedures for consultation. Participation in consultation with the SHPO may be initiated by a walk-in, visit, a phone call, fax, or e-mail. The consultation process should proceed under the direction of one individual, agency official, or project sponsor to ensure consistence and accuracy.

The project sponsor should submit the project information, preliminary assessment forms, or archaeological reports to the SHPO for review and comment. The project sponsor is often the person or group funding the archaeological investigations. In the case of a Certified Local Government grant or Historical Resource Development Program grant, the grant recipient must transmit the report to the SHPO. All reports submitted to the SHPO should be accompanied by a cover letter stating the project name, the agencies involved, and the purpose of the transmittal. The cover letter should also identify the person or agency to which the reply should be directed. At this time all reports and project information should be submitted in a paper format to the SHPO.

The SHPO does not have the capability at this time as a standard procedure to receive reports or other project information in an electronic format. Requests regarding the submission of information via an electronic format to the SHPO may be accommodated but should be made on an individual basis. *This chapter describes State Historical Society of Iowa State Historic Preservation Office’s procedures and time frames for section 106 project review. This section also describes other review procedures for projects that are not regulatory in nature.*

The National Historic Preservation Act (NHPA) as amended defines the role of the Iowa State Historic Preservation Office (SHPO). The Iowa SHPO
functions include activities that identify and maintain an inventory of historic properties, evaluate their significance, and preserve those deemed worthy of protection. The Iowa SHPO has responsibility under the NHPA to advise and assist, as appropriate, federal and state agencies and local governments in carrying out their historic preservation responsibilities. The Iowa SHPO is to provide public information, education and training, and technical assistance in historic preservation. The Iowa SHPO also has responsibility under the NHPA to cooperate with the Secretary, the Advisory Council on Historic Preservation, and other federal and state agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development. A list of Iowa SHPO staff is included in the Appendix.

The SHPO in Iowa is part of the State Historical Society of Iowa at 600 East Locust Street, Des Moines, IA, 50319-0290. The State Historical Society (SHSI) receives funding from the National Park Service (NPS) for the SHPO. NPS program guidelines require that the SHPO comply with 36 CFR Part 79 (NPS 49, Ch. 6, pp. 1-2). Therefore, in Iowa, any archaeological identification or evaluation surveys funded through the SHPO must meet the Secretary of Interior Standards Guidelines for identification, evaluation, documentation, collection, curation, etc.

One of the Iowa SHPO's other responsibilities is to maintain a historic properties inventory for the state of Iowa. Reports that do not meet the recommendations in these guidelines cannot be integrated into the state's historic properties inventory in a productive manner.

In accordance with the NHPA, the Iowa SHPO also serves as a consulting party under Section 106 (regulatory archaeology) of the act to consult with federal agencies. The Iowa SHPO also serves to review and comment upon federal undertakings, their effect upon historic properties, and the content and sufficiency of any plans developed to protect, manage, or reduce or mitigate harm to such properties. The SHPO is also to advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for federal assistance.

The SHPO has preliminary assessment forms and information for individuals who are uncertain if their project should be reviewed under regulatory archaeology precepts or who would like assistance in understanding how historic properties relate to their specific projects. To aid the SHPO in projects submitted for review, a copy of the “Review and Compliance Questionnaire” form should be fully completed and sent along with the supporting information, maps, photographs, or appropriate documentation to the SHPO office. Incomplete forms and incomplete information impedes the SHPO’s ability to review projects in a timely fashion. Copies of the appropriate forms are available in Section 5 of these guidelines and from the Community Programs Bureau website at:

http://www.state.ia.us/government/dca/
When submitting project information to the Iowa SHPO for review and comment, some of the information to include with project determination is:

- Review and Compliance Form fully completed.
- Legal location of the project area with section, township, and range.
- A description of the proposed project activities and types of impact.
- A description of the project’s area of potential effects both horizontally and vertically (the area and depth of impact).
- A description of any previous disturbances in the project area (e.g. agriculture, sewer pipes, previous borrow activities, etc.). Is project within existing right-of-way?
- A description of current project conditions and current ground or vegetation cover in each portion of the project area. Is the project in pasture or fallow ground? What portions of the project are in pasture or fallow ground?
- Precise project location map (preferably U.S.G.S. 7.5 min Quad with scale, north arrow, name, date, & location). Are the project area limits clearly designated on the U.S.G.S. map?
- Available site plan or concept plan showing proposed excavation and project limits. Is a site plan available?
- Any previous SHPO comment letters applicable to the project area.
- Copies of the summary statements from previous survey reports that document the project area was previously surveyed, that no historic properties were present, or that the archaeological site identified are not eligible for the National Register of Historic Places.
- Copies of cover pages to archaeological or architectural reports that document the project area was previously surveyed.
- Copies of maps from reports that show the project area was previously surveyed.
- Description of sources looked at while conducting background research and appropriate citations.
- Print photographs if applicable (e.g. several different views of historic structures, bridges, etc.).
- An aerial photograph of the project area if available.
- Information about any previous archaeological investigations within or near the project area.
- Information about archaeological sites or architectural resources located within or near the project area.
- Information from any previous geomorphological research that has been conducted in the project area (e.g. soil bores, previous surveys, etc.).

In consideration of the revised 36 CFR Part 800 (June 1999), the Iowa SHPO requests that agencies submitting a formal review under Section 106 include a one paragraph, or one page, executive summary explicitly stating all their findings and determinations when submitting a determination and supporting documentation. This can be included in a cover letter, abstract in a report, or other brief format.
According to 36 CFR Part 800, an agency must have prior concurrence from the SHPO before implementing alternate procedures to comply with Section 106 of the NHPA if the agency does not have a Programmatic or other agreement with the SHPO or NCSHPO specifically detailing those procedures. The Iowa SHPO reviews these alternate procedures on an individual basis and will provide concurrence in a written manner if applicable. At the current time, the Iowa SHPO does not concur with the use of alternate procedures, such as predictive modeling, to make determinations of "no historic properties effected." The use of predictive models has not been tested and validated to provide decisively reliable accuracy for most archaeological site locations in the state of Iowa.

When the Iowa SHPO receives information on a project to be reviewed, the Iowa SHPO date stamps the material and assigns a "Review and Compliance" file number. The Iowa SHPO places this file number in the upper right hand corner of all out-going correspondence related to the project. Please give that number, the name of the federal agency, and the project name on any correspondence or telephone inquiries related to the project. Iowa SHPO review times vary depending on the nature of the project. Most of the material received at the Iowa SHPO has a 30 calendar day review period that begins when the material has been received at Iowa SHPO.

In the case of regulatory projects, SHPO response procedures are similar regarding the different determinations proposed by the federal agency. Under the 1999 36 CFR Part 800 regulations, “If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the Agency Official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO.” The project sponsor, ordinarily the federal agency funding or administering the project, should submit the project information, which may or may not include an archaeological report, to the SHPO for review. The specific SHPO response times are discussed below:

When an agency submits information regarding a project to the SHPO with no determination of the effects of the project on historic properties, the SHPO has a 30-calendar day review period that begins when the material has been received at SHPO. However, the Section 106 process is not considered fulfilled without an agency determination.

When an agency submits information regarding a project to the SHPO with a finding or determination of “No Historic Properties Effected” of the project on historic properties, the SHPO has a 30-calender day review period that begins when the material has been received at SHPO. If the SHPO/THPO, or the Council if it has entered into the Section 106 process, does not object within 30 days of receipt of an adequately documented finding, the Agency Official’s responsibilities under Section 106 are fulfilled.

When an agency submits information regarding a project to the SHPO with a finding or determination of “Historic Properties Effected” and “No Adverse Effect” of the project on historic properties, the SHPO has a 30-calender day review period that begins when the material has been received at SHPO.
“Unless the Council is reviewing the finding pursuant to § 800.5(c)(3), the Agency Official may proceed if the SHPO/THPO agree with the finding. Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement with the finding (36 CFR Part 800).”

When an agency submits information regarding a project to the SHPO with a finding or determination of “Historic Properties Effected” and “Adverse Effect” of the project on historic properties, the SHPO has a 30-calender day review period that begins when the material has been received at SHPO.

When the SHPO requests additional information from an agency regarding any project regardless of the finding or determination and the project has been logged out of the SHPO tracking system, the SHPO has an additional 30-calender day review period that begins when that additional material has been received at SHPO.

The Advisory Council on Historic Preservation may also be provided the opportunity for review and comment for regulatory projects pertaining to section 106 of the NHPA. The different Advisory Council on Historic Preservation response times are discussed below:

When a disagreement with a finding or determination of “Historic Properties Effected” is submitted to the Council pursuant to §§ 800.5(c)(2) with the documentation specified in § 800.11(e), “the Council shall review the finding and notify the Agency Official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the Agency Official.”

When an agency submits a Memorandum of Agreement to the Advisory Council on Historic Preservation, the Council has a 30-calender day review period that begins when the material has been received at the Council.

When there is no agreement and no Memorandum of Agreement is submitted to the Advisory Council on Historic Preservation, the Council has a 30-calender day review period that begins when the material has been received at the Council.

When a public or consulting party objection to an agency determination of effects of a project on historic properties is submitted to the Advisory Council on Historic Preservation, the Council has a 30-calender day review period that begins when the material has been received at the Council.

When an Agency Official or SHPO/THPO terminates consultation, the Council has a 30-calender day review period that begins when the material has been received at the Council.

Where the Council determines that an Agency Official or a SHPO/THPO has failed to properly carry out the responsibilities in this part, the Council may participate in individual case reviews in a manner and for a period that it determines is necessary to improve performance or correct deficiencies.

On occasion, the time frame for a project necessitates a response from the SHPO in less than the prescribed review time. For emergency situations, the SHPO has adopted a verbal concurrence policy. This policy applies only to
Phase I surveys and only to projects less than 20 acres in size. A verbal concurrence will be issued only under the following circumstances:

When a project report has been (1) received by SHPO staff, (2) no historic properties will be affected by the undertaking, (3) the Principal Investigator has recommended project approval, and (4) the SHPO concurs with this recommendation; then the SHPO staff will give a verbal approval to the agency, and, if the agency chooses, it may initiate work prior to receipt of the SHPO letter.

When a project report has not been received by the SHPO staff, but:

a. All fieldwork and research stages of a cultural resource survey have been completed and no historic properties were found in the project area; and

b. The cultural resource consultant or agency staff member who conducted the survey gives a verbal survey report to the appropriate SHPO staff member; then the SHPO staff member will consider the request and give a verbal concurrence if deemed appropriate. If SHPO staff gives a verbal concurrence to the agency then, if the agency chooses, it may initiate work prior to receipt of the SHPO letter.

The SHPO staff should receive the written survey report within 30 days from the date of the verbal concurrence, and the review process will then be completed through regular channels. If the written report does not meet professional standards endorsed by the National Park Service, then the Principal Investigator and the agency will be notified that future requests for verbal concurrence may not be considered.

A verbal concurrence cannot be issued if an archaeological, architectural, or historical resource was found during the investigation. This includes any archaeological material and any building, structure, or objects greater than 50 years of age. Please note that no verbal concurrence will be given for projects involving Phase II testing or Phase III data recovery. In consideration of regulatory archaeology, agencies that are legally responsible for complying with Section 106 of the National Historic Preservation Act should carefully consider its responsibilities when determining whether to proceed with the project on the basis of a verbal concurrence.
This chapter describes different avenues for site interpretation and public outreach as a result of archaeological investigations.

The Secretary of the Interior's Standards for Historical Documentation states that results from archaeological investigations should be communicated to the professional community and the public in reports. The Standards also state that the goal of disseminating information must be balanced.
Effort should be made with each project to interpret the archaeological resource in terms of various criteria and in a manner that the general public should easily understand. The various criteria that would be of interest to the public include but are not limited to site age and cultural affiliation, artifact content and use, site activities and functions, belief systems, and local and regional settlement patterns. The public interest in archaeological resources may constitute educators, students, avocational archaeologists, and other interested individuals.

Educators are interested in archaeological interpretations that demonstrate the ways in which prehistoric and historic peoples meet basic human needs. They also strive to compare and contrast the past and present through the study of the archaeological record. Specific public archaeology educational objectives for students include the ability to: 1) observe and identify artifacts and structures that support the daily lives of the inhabitants, 2) compare prehistoric artifacts and building features to those of people today, and 3) speculate about the relative importance of different artifacts and structures. Educators are interested in interpretations that reach their conclusions through the use of math, writing, art, social studies, and science skills. Use of these interdisciplinary skills encourages interest in the analytical thought applied to solve research questions pertaining to archaeology.

Public outreach attempts to find ways to make archaeological research and investigations relevant to the modern world. Public outreach should focus on serving the public interest in a responsible manner that is beneficial to the public. Outreach in archaeology offers a broad audience of non-professionals the opportunity to understand earlier cultures, cultural adaptation, and human development that address a growing interest in the past. Additional goals of public outreach in archaeology include:

- Reflect the depth and richness of the human experience
- Support awareness and respect for one's own cultural past and present
- Support awareness and respect for other cultures
- Develop knowledge and interest about past cultures
- Develop greater understanding and appreciation of archaeology, archaeological methods, and their applications
- Identify misconceptions and offer new interpretations
- Apply new archaeological insights to contemporary situations
- Provide an educational return for public financial support

The National Historic Preservation Act as amended, addresses and encourages public outreach and involvement. The Council values the views of the public on historic preservation questions and encourages maximum public participation in the Section 106 process. According to the Advisory Council regulations, “The agency official and the State Historic Preservation Officer should seek to consider the views of the public when taking steps to identify historic properties, evaluate effects, and develop alternatives (36 CFR Part...
Various creative methods should be explored to convey archaeological information and interpretation in “an appropriate manner” to the public. Examples of effective communication methods are listed below:

- Published material (public reports, brochures, pamphlets)
- Exhibits (permanent and traveling)
- Various media (TV, radio, video, internet)
- Presentations (lectures, conferences, local speeches, demonstrations)
- Signs (historic site, display, etc.)
- Boy Scout Archaeology Merit Badge
- Girl Scout Program
- Archaeology Awareness Week

However, it is of course imperative in some situations to withhold specific information such as site location for protection of the archaeological resource. This situation is recognized in Section 304 of the National Historic Preservation Act that discusses the confidentiality of the location of sensitive historic resources. In Iowa, the Office of the State Archaeologist also has specific policies on releasing certain kinds of information pertaining to archaeological resources.

Public archaeology involves non-professionals in academic or contract-related archaeology projects and creates an interactive environment between professionals and non-professionals. In public archaeology, an agency or organization sponsoring an archaeological project does more than just provide information to the public. They provide continued community involvement through various levels of archaeological experience under the direct supervision of a professional archaeologist. Public archaeology accomplishes many of the goals identified for public outreach.

Public archaeology benefits both the public and the agency or organization that sponsors the project. The public benefits by increased awareness and appreciation of the environment and human history, increased knowledge about the cultural resource and historic preservation, a sense of accomplishment and community cohesiveness. The agency benefits by decreasing project costs, positive press, fostering a better relationship with the community, etc.

The Office of the State Archaeologist has a public archaeology program that expands upon a long and distinguished history of archaeological outreach and education in Iowa. The OSA is dedicated to developing, disseminating, and preserving knowledge of Iowa’s archaeological past. The public archaeology program aspires to convey this long and rich past to Iowa’s citizens, fostering an appreciation for Iowa’s prehistoric and historic past, encouraging a conservation ethic in all Iowans, and promoting an understanding of the discipline of archaeology.
While archaeological studies in Iowa are to a large extent publicly funded, access to the current data on Iowa’s archaeological past is limited. The public archaeology program attempts to remedy this situation by developing a coordinated approach to outreach efforts in conjunction with many partners across the state. These include the SHSI, AEA’s, county conservation boards, the DNR, the OSA Indian Advisory Committee, anthropology departments, museums, the Iowa Archeological Society, the Iowa Academy of Science, CRM firms, youth organizations, and many others. Target groups for outreach consist of adults and youths, both inside and outside formal school settings. Among the perceived needs of these groups are information on the diverse American Indian cultures that have inhabited the region prehistorically and historically, the contributions they have made to our modern world, and the nature of archaeological research and its role in providing this information.

The OSA’s public archaeology efforts include but are not limited to the following: computer resources including the OSA web site with information on field school and field trip opportunities, the interactive “Ask an Archaeologist” feature, calendars of upcoming events and presentations, links to relevant web sites, and cyberspace tours of sites and excavations; continued production and dissemination of educational materials, videos, and publications; expansion of curriculum materials for precollegiate instructors as part of SHSI history curriculum development; teacher and public workshops and field opportunities; support and coordination of a public speakers bureau; planning and coordination of annual Iowa Archaeology Week/Month activities; and continued support of the avocational certification program in association with the Iowa Archaeological Society.

Agencies and consultants may find that working with these and other public archaeology programs and venues can be highly effective and rewarding efforts.